



Australian Government
Department of Defence
Defence Support and Reform Group

Ministerial and Information
Management Branch
Department of Defence

CP1-6-001
PO Box 7910
CANBERRA BC ACT 2610
Tel: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

Our reference: FOI 106/14/15



By email: 

Dear 

1. I refer to your email, dated 13 October 2014, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

"A copy of the Deed of Settlement of Trust for Point Nepean in Victoria. The Deed was undertaken to facilitate the transfer of Point Nepean (in Victoria) from the Commonwealth of Australia to the Victorian State Government in July 2009"

Background

2. I also refer to our email dated 27 October 2014 where we advised you that the Deed of Settlement of Trust for Point Nepean in Victoria was publicly available at:
http://www.defence.gov.au/publications/docs/deed_point_nepean.pdf.

3. As the publicly available version does not include the Amendment, our office interpreted the scope of your request as seeking access to:

"A copy of the amendment to the Deed of Settlement of Trust for Point Nepean in Victoria."

4. You did not object to our interpretation.

5. The purpose of this letter is to provide you with the decision relating to the document that is the subject of your request.

FOI decision maker

6. Mr Anthony Atkinson, Project Manager, Strategic Information Management is the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

7. Mr Atkinson identified one document entitled 'Point Nepean Community Trust Deed of Amendment' as matching the description of your request. The document in the form approved for release is at Enclosure 1.

Decision

8. Mr Atkinson has decided to partially release the document with deletions made in accordance with section 22 [Access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is considered exempt under section 47F [public interest conditional exemptions-personal privacy] of the FOI Act.

Material taken into account

9. In making his decision, Mr Atkinson had regard to:
- a. the terms of the FOI request;
 - b. the content of the identified document in issue;
 - c. relevant provisions in the FOI Act;
 - d. Defence guidance material on the FOI Act and the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
 - e. advice provided by the area whose duties relate to the requested documents.

Reasons for Decision

Section 47F – personal privacy

10. Upon examination of the document, Mr Atkinson identified information, specifically, signatures, and personal addresses of people external to the department. This material satisfies the definition of personal information in section 4 of the FOI Act. In accordance with section 47F(2) of the FOI Act, in determining whether the disclosure of the identified personal information would be unreasonable, Mr Atkinson had regard to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be, or to have been, associated with the matters dealt with in the documents; and
- c. the availability of the information from publicly accessible sources.

11. Against those criteria, Mr Atkinson found that:

- a. the specific personal information is not well known to the general community;
- b. the person to whom the information relates is not known to be, or to have been, associated with the matters dealt with in the documents; and
- c. the specific information is not readily available from publicly accessible sources.

12. Noting the findings against the above criteria, Mr Atkinson decided that the disclosure of this information would constitute an unreasonable disclosure of personal information belonging to a person other than you and could cause stress to these individuals if this information were to be released. Accordingly, Mr Atkinson considered this material to be conditionally exempt under section 47F of the FOI Act.

13. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

Public Interest Considerations – personal privacy

14. When assessing whether the disclosure of the identified personal information is contrary to the public interest, Mr Atkinson considered the factors that favour access to a document set out in section 11B(3) of the FOI Act [Public interest exemptions – factors]. He noted that none of the factors listed in section 11B(4) [Irrelevant Factors] were taken into account when making his decision.

15. In relation to section 11B(3)[Promote the objects of this Act (including all the matters set out in sections 3 and 3A)] of the FOI Act, Mr Atkinson considered information held by the Government is a national resource and release of the personal information would promote the object of the FOI Act specified in section 3(1)(b) of the FOI Act. However disclosure of this information would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

16. Paragraph 6.29 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors Mr Atkinson found particularly relevant to your request are that disclosure of the document:

- a. could reasonably be expected to prejudice the protection of an individual's right to privacy;
- b. could reasonably be expected to prejudice an agency's ability to obtain similar information in the future; and
- c. could reasonably be expected to prejudice the agency's ability to maintain the confidentiality of material that has been obtained in the express or implied understanding that it be treated confidentially and not disseminated widely.

17. Based on the above, Mr Atkinson considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the identified personal information. Therefore, he decided that it would be contrary to the public interest to release information considered exempt under section 47F of the FOI Act.

Rights of review

18. The FOI Act provides for rights of review of decisions. A copy of the fact sheet, "Freedom of Information – Your Review Rights", setting out your rights of review is at Enclosure 2.

FOI Disclosure Log

19. In accordance with the requirements of section 11C of the FOI Act, Defence is required to publish details of information released under the FOI Act. Defence publishes identified documents relating to requests within five working days of receipt by the applicant. Defence will also publish this decision notice with privacy deletions.

Further information

20. FOI Act may be accessed at: <http://www.comlaw.gov.au/Details/C2014C00122>.

21. All departmental action on your request is now complete. Should you have any questions in regard to this matter please contact this office.

Yours sincerely



Vanessa Elphick
FOI Case Officer
Freedom of Information

6 November 2014

Enclosures:

1. Documents in the form for release
2. Fact Sheet: Freedom of Information – Your Review Rights